

No. 2794

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

TOKU SAKI,

Appellant,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE

Upon Appeal From the United States District Court
For the Territory of Hawaii.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Appellee.

Filed

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Filed this.....day of October, 1916.

FRANK D. MONCKTON, Clerk.

F. D. Monckton
Clerk

By....., Deputy Clerk.

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Appellant relies upon two propositions in support of her appeal, as follows:

1. That "she was given no hearing at all before the Immigration authorities at the port of Honolulu, under the Constitution and Laws of the United States and the Immigration Rules," and

2. That "she was given only the semblance of a hearing before the Immigration authorities at the port of Honolulu, under the said laws and rules."

Both appellant and appellee agree that the deportation proceedings were instituted and prose-

cuted under that portion of Section 3 of the Immigration Laws, which reads as follows:

“Any alien who shall be found * * * practicing prostitution after such alien shall have entered the United States * * * shall be deemed to be unlawfully within the United States and should be deported in the manner prescribed by Sections 20 and 21 of this Act.”

It is also agreed that the deportation proceedings under said Section 3 are governed by Sections 20 and 21 of said Immigration Laws and Rule 22 thereof.

The principal point of contention in the appeal is whether or not the said alien was given a fair hearing, and while the transcript does not contain all of the proceedings that took place before the Immigration officials, yet the Government is of the opinion that enough of the Immigration record is set forth in the transcript to support the order of deportation of the Secretary of Labor and a brief review of the steps taken will support this view.

On September 29, 1913, a cablegram was sent in code form by the Acting Secretary to the “Immigration Service, Honolulu” (pp. 30 and 31 Trans.) authorizing the arrest of said alien Toku Saki, that said cablegram, when translated, reads as follows:

“ARROW: Arrest following named alien(s) and bring before yourself for hearing, forwarding record of proceedings to the Department.

PROGNOSIS: Alien found practicing prostitution after entry.

RELAY: Authority granted for release from custody under bond in the sum of _____ hundred dollars."

That following the receipt of said warrant of arrest, the said alien was given a hearing (pp. 29 and 30 Trans.). The only account of the hearing given in said transcript is set forth as follows:

"United States Immigration Service,
Honolulu, T. H., October 2, 1913.

Examining Inspector—Harry B. Brown.

Interpreter—Chomei Tajima.

Stenographer—Charles W. Durkee, Jr.

Case of Toku Sakai—Prostitute.

Telegraphic warrant of arrest attached as
"Exhibit A."

Alien sworn, testified:

Q. What is your name? A. Toku Sakai.

Q. How old are you? A. Twenty-eight.

Q. Born where?

A. Hiroshima City, Hiroshima Ken.

Q. When did you first come to Hawaii?

A. Meiji 37.

Q. What boat?

A. I forgot the name of the boat.

Q. What is the name of your husband?

A. Segawa Gonjiro.

Q. Where is he now?

A. It is seven years since I separate from him, may be in the United States or may be in Hawaii.

Q. Have you been practicing prostitution?

A. Yes.

Q. How long?

A. About one year and I did before that time.

Q. Well, when did you first start in the occupation?

A. About five years ago.

(Alien signed her name in the note book.)

October 7, 1913.

Interpreter—Tomizo Katsunuma.

Q. What is your name?

A. Toku Sakaye (Sakai).

Q. Do you want a lawyer? A. Yes.

Certified correct.

(Sgd.) Charles W. Durkee, Jr.

Stenographer."

The transcript shows that the said hearing was conducted on October 2 and October 7, 1913, and that the examination was carried on through an interpreter, and during the course of the said examination the alien was asked if she wanted an attorney to which she replied in the affirmative.

On October 17, 1913, another cablegram was sent by Acting Secretary Post to the Immigration Office at Honolulu, authorizing the arrest of said alien (p. 28 Trans.) and on the same date a written warrant was also forwarded (pp. 26 and 27 Trans.), the contents of which are as follows:

“Warrant—Arrest of Alien.

Form 561.

United States of America,
Department of Commerce and Labor,
Washington.

No. 53, 678/459-460-1-2-3-4-5.

To Richard L. Halsey, Inspector in Charge,
Honolulu, T. H.

Whereas, from evidence submitted to me, it appears that the aliens Ching Lum, Sui Joy, Chun Pin, Wong Yuen, Kwanjiro Haruta, Hatsume Haruta, and TOKU SAKAI, who landed at some unknown port, on the — day of —, have been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March 26, 1910, for the following among other reasons:

That the said Ching Lum, Sui Joy, Chun Pin, Wong Yuen, and Kwanjiro Haruta are unlawfully within the United States in that they have been found receiving, sharing in, or deriving benefit from the earnings of a prostitute, or prostitutes; and that the said Hatsume Haruta and TOKU SAKAI are prostitutes and have been found practicing prostitution subsequent to their entry into the United States.

I, Louis F. Post, Acting Secretary of Commerce and Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said aliens and grant them a hearing to enable them to show cause why they should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized payable from the appropriation “Expenses of Regulating Immigration, 1914.” Pending further proceedings, the aliens

may be released from custody upon furnishing satisfactory bond in the sum of \$1000 each.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 17th day of October, 1913.

(Sgd.) Louis F. Post,
Acting Secretary of Commerce
and Labor."

Toku Saki was represented by an attorney and this fact appears on page 26 of the transcript, where he was addressed as follows:

"Department of Commerce and Labor,
Immigration Service.
Office of Inspector in Charge,
Honolulu, Hawaii, December 18, 1913.

Mr. Wm. J. Sheldon,
Merchant Street,
Honolulu, T. H.

As attorney in the case of Toku Sakai, you are hereby notified that a further hearing in this case will be had on Monday, December 22d, at 9:30 a. m., at which time any evidence pertinent to the case that you submit will be considered.

Immigrant Inspector."

On page 25 of the transcript in this case it clearly appears that the said alien's attorney was looking after her interests and finally concludes that it was unnecessary to offer any further evidence of testimony, and expressly waived the filing of a brief (pp. 25 and 26 Trans.).

On March 16, 1914, the Immigration Inspector in Charge at Honolulu transmitted the testimony to the Secretary of Labor by letter (p. 24 Trans.), which reads as follows:

"No. 4280/90. March 16th, 1914.
The Honorable,
 The Secretary of Labor,
 Washington, D. C.
 (Thru Commissioner-General of
 Immigration.)

There is transmitted herewith the testimony in the case of Toku Sakai, who was arrested and given a hearing as directed in Warrant of Arrest No. 53678/465.

(Signed) Richard L. Halsey,
Inspector in Charge.

HBB/JLM.

In re:

Toku Sakai,
No. 4280/90."

When the Secretary of Labor received the evidence presented in the hearings of said Toku Saki, the said Secretary of Labor forwarded to Richard L. Halsey, Immigration Inspector, a warrant of deportation (pp. 22 and 23 Trans.), which reads as follows:

“WARRANT—DEPORTATION OF ALIEN.
UNITED STATES OF AMERICA,
DEPARTMENT OF COMMERCE AND LABOR,
Washington.

No. 53678/465.

TO RICHARD L. HALSEY, Inspector in
Charge, Honolulu, T. H.

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector Harry

B. Brown, held at Honolulu, T. H., I have become satisfied that the alien TOKU SAKAI, who landed at the port of Honolulu, T. H., has been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March 26, 1910, to wit:

That the said alien is a prostitute and has been found practicing prostitution subsequent to her entry into the United States, and may be deported in accordance therewith.

I, J. B. Densmore, Acting Secretary of Commerce and Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Japan, the country whence she came, at the expense of the appropriation 'Expenses of Regulating Immigration, 1914.' You are directed to purchase transportation for the alien from Honolulu, T. H., to her home in Japan at the lowest scheduled rate obtainable from the Pacific Mail Steamship Company, payable from the above mentioned appropriation.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 28th day of March, 1914.

(Signed) J. B. DENSMORE.

Acting Secretary of Commerce and Labor.
CEB.

11-2721."

The Government agrees with appellant's counsel in his statement set forth in the opening brief that in order to have a hearing there must be

- a. A valid warrant of arrest,
- b. Arrest of the alien under that warrant,

c. The bringing of that alien before the administrative officer named in the warrant,

d. Evidence produced and offered before that administrative officer,

e. A finding or decision by such administrative officer actually made and based upon that evidence,

and in this connection the Government contends that each and every of the above steps were taken, and counsel's position that a "telegraphic warrant of arrest," directed to "Immigration Service, Honolulu," is not sufficient, is not well taken. All that the Immigration Laws require in this case is that the Secretary of Labor "cause such alien to be taken into custody * * * ". If an arrest cannot be made by a telegraphic warrant, in many cases the alien cannot be apprehended and justice would be totally defeated. Section 21 of the Immigration Act does not specify in what manner the warrant of arrest must issue, and inasmuch as the laws of our land permit arrest to be made by telegraphic warrant, there certainly can be no objection to an arrest being made by an Immigration officer in pursuance to the carrying into effect of the Immigration Laws.

Since the alien is charged in this case with *practicing prostitution after entry*, the three-year period in which most aliens must be deported does not apply.

Zakonaite vs. Wolf, 228 U. S. 272;

Bugajewitz vs. Adams, 228 U. S. 584.

Appellant also takes the position that the warrant was defective because it was directed to the "Immigration Service, Honolulu," but the Government submits that this designation is sufficiently specific and that the warrant, itself, contains all of the necessary information that the law requires, since it sufficiently designates the person to be arrested and sets forth the charge placed against the said alien. (pp. 30 and 31 Trans.)

Appellant also takes the position that the said alien was not properly informed of her rights. While the record, as it appears in the transcript, is incomplete, the praecipe indicates that a complete record was not called for by appellant, and since there is no showing that the said alien was not given a fair trial, it is presumed that all of the steps taken by the Immigration officials were regular.

Gonzales vs. Ross, 120 U. S. 605.

The record shows that the alien was represented by an attorney, and if there was any irregularity in the proceedings, or any unfairness on the part of the Immigration officials, that fact should have been taken advantage of by the alien's counsel and the record should have shown wherein the unfairness existed.

As the record now appears in the transcript, no complaint was ever made on the part of the alien and there was never any intimation by her or her counsel that she was not being treated fairly during the course of her hearings. In fact, her counsel ex-

pressly waived any further opportunity of presenting further *evidence* or a *brief* in the case.

It is also contended that the evidence was insufficient to support the warrant of deportation. In reply to this contention, attention is again called to the alien's testimony which appears on page 29 of the transcript, wherein she admitted that she had practiced prostitution. Because of this frank admission on the part of the said alien, and for the further reason that the record, as presented in the transcript, does not show that any advantage was taken by the Immigration officials over said alien, it is the Government's contention that the Immigration officials did not abuse their discretion and acted within the latitude usually accorded them in such cases.

White vs. Gregory, 213 Fed. 768;
Healy vs. Backus, 221 Fed. 358;
Lee Lung vs. Patterson, 186 U. S. 170.

Respectfully submitted,

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